

BASIS FOR THE AMENDMENT

Claims 2, 3, and 8-11 have been canceled.

New Claim 12 has been added.

Claims 4-7 have been amended.

New Claim 12 is supported by original Claims 1-3 and 8-11. The amendment of Claims 4-7 is supported by the corresponding claims as originally filed.

No new matter is believed to have been entered by the present amendment.

REMARKS

Claims 4-7 and 12 are pending in the present application.

At the outset, Applicants wish to thank Examiner Aughenbaugh and Examiner Pyon for the helpful and courteous discussion with their undersigned Representative on October 7, 2002.

The rejections of Claims 1-7 under 35 U.S.C. §102 over Fox and of Claims 1 and 7 under 35 U.S.C. §103 over Fox in view of Applicants' alleged admission are obviated by amendment.

Applicants submit that Fox does not disclose or suggest a container for an immunoassay that is coated with an ultra-hydrophilic polymer selected from the group consisting of a polyoxy(C₂-C₉ alkylene group-containing methacrylate) polymer, a copolymer containing a polyoxy(C₂-C₉ alkylene group-containing methacrylate) polymer subunit, polyvinyl pyrrolidone, a phospholipid-polymer composite, a (2-methacryloyloxyethylphosphorylcholine) polymer and a copolymer containing a (2-methacryloyloxyethylphosphorylcholine) polymer subunit, as presently claimed (see Claim 12).

The standard for determining anticipation requires that the reference “must teach every element of the claim” (MPEP §2131). Therefore, in view of the absence of a disclosure or suggestion of the specific an ultra-hydrophilic polymer presently claimed, Fox does not anticipate the presently claimed invention.

Moreover, citing In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974), MPEP §2143.03 states: “To establish a prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” Applicants submit that the disclosure of Fox fails to meet this requirement, and as such the artisan would have no reasonable motivation to produce a container for an immunoassay as presently claimed or any reasonable expectation of the advantageous obtained thereby.

Applicants respectfully request withdrawal of this ground of rejection.

The rejection of Claims 1-7 under 35 U.S.C. §102 over Levy et al and of Claims 1 and 7 under 35 U.S.C. §103 over Levy et al in view of Applicants’ alleged admission are obviated by amendment.

Applicants submit that Levy et al do not disclose or suggest a container for an immunoassay that is coated with an ultra-hydrophilic polymer selected from the group consisting of a polyoxy(C₂-C₉ alkylene group-containing methacrylate) polymer, a copolymer containing a polyoxy(C₂-C₉ alkylene group-containing methacrylate) polymer subunit, polyvinyl pyrrolidone, a phospholipid-polymer composite, a (2-methacryloyloxyethylphosphorylcholine) polymer and a copolymer containing a (2-methacryloyloxyethylphosphorylcholine) polymer subunit, as presently claimed (see Claim 12).

The standard for determining anticipation requires that the reference “must teach every element of the claim” (MPEP §2131). Therefore, in view of the absence of a disclosure

or suggestion of the specific an ultra-hydrophilic polymer presently claimed, Levy et al do not anticipate the presently claimed invention.

Moreover, citing In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974), MPEP §2143.03 states: “To establish a prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” Applicants submit that the disclosure of Levy et al fails to meet this requirement, and as such the artisan would have no reasonable motivation to produce a container for an immunoassay as presently claimed or any reasonable expectation of the advantageous obtained thereby.

Applicants respectfully request withdrawal of this ground of rejection.

The rejection of Claims 1-7 under 35 U.S.C. §102 over Buechler and of Claims 1 and 7 under 35 U.S.C. §103 over Buechler in view of Applicants’ alleged admission are obviated by amendment.

Applicants submit that Buechler does not disclose or suggest a container for an immunoassay that is coated with an ultra-hydrophilic polymer selected from the group consisting of a polyoxy(C₂-C₉ alkylene group-containing methacrylate) polymer, a copolymer containing a polyoxy(C₂-C₉ alkylene group-containing methacrylate) polymer subunit, polyvinyl pyrrolidone, a phospholipid-polymer composite, a (2-methacryloyloxyethylphosphorylcholine) polymer and a copolymer containing a (2-methacryloyloxyethylphosphorylcholine) polymer subunit, as presently claimed (see Claim 12).

The standard for determining anticipation requires that the reference “must teach every element of the claim” (MPEP §2131). Therefore, in view of the absence of a disclosure or suggestion of the specific an ultra-hydrophilic polymer presently claimed, Buechler does not anticipate the presently claimed invention.

Moreover, citing In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974), MPEP §2143.03 states: “To establish a prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” Applicants submit that the disclosure of Buechler fails to meet this requirement, and as such the artisan would have no reasonable motivation to produce a container for an immunoassay as presently claimed or any reasonable expectation of the advantage obtained thereby.

Applicants respectfully request withdrawal of this ground of rejection.

The rejection of Claims 1-7 under 35 U.S.C. §102 over Oberhardt and of Claims 1 and 7 under 35 U.S.C. §103 over Oberhardt in view of Applicants’ alleged admission are obviated by amendment.

Applicants submit that Oberhardt does not disclose or suggest a container for an immunoassay that is coated with an ultra-hydrophilic polymer selected from the group consisting of a polyoxy(C₂-C₉ alkylene group-containing methacrylate) polymer, a copolymer containing a polyoxy(C₂-C₉ alkylene group-containing methacrylate) polymer subunit, polyvinyl pyrrolidone, a phospholipid-polymer composite, a (2-methacryloyloxyethylphosphorylcholine) polymer and a copolymer containing a (2-methacryloyloxyethylphosphorylcholine) polymer subunit, as presently claimed (see Claim 12).

The standard for determining anticipation requires that the reference “must teach every element of the claim” (MPEP §2131). Therefore, in view of the absence of a disclosure or suggestion of the specific an ultra-hydrophilic polymer presently claimed, Oberhardt does not anticipate the presently claimed invention.

Moreover, citing In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974), MPEP §2143.03 states: “To establish a prima facie obviousness of a claimed invention, all the claim

limitations must be taught or suggested by the prior art.” Applicants submit that the disclosure of Oberhardt fails to meet this requirement, and as such the artisan would have no reasonable motivation to produce a container for an immunoassay as presently claimed or any reasonable expectation of the advantageous obtained thereby.

Applicants respectfully request withdrawal of this ground of rejection.

The rejection of Claims 1-7 under 35 U.S.C. § 112, first paragraph, is obviated by amendment.

In making this ground of rejection, the Examiner states that: “The identities of the molecules used (including size), the temperature, concentration of the solution, and the pH of the solvent that enable use of the invention are not disclosed.” (paper number 5, page 2, numbered paragraph 3).

Applicants submit that that the saturation adsorption amount is, in fact, a function of the container and are defined by the ultra-hydrophilic polymer selected for coating the container. Applicants refer the Examiner to page 7, line 18 to page 8, line 26 of the specification, which clearly provides guidance for the selection of the criteria alluded to by the Examiner. Moreover, Applicants refer the Examiner to the Examples (pages 13-23), which provide the artisan with a detailed roadmap of experiments that can be used to assess whether the claimed saturation adsorption threshold has been met.

Accordingly, Applicants submit that the presently claimed invention is fully enabled within the context of 35 U.S.C. §112, first paragraph. Withdrawal of this ground of rejection is requested.

The rejection of Claims 1-7 under 35 U.S.C. § 112, second paragraph, is obviated in part by amendment and traversed in part.

Applicants submit that that the saturation adsorption amount is, in fact, a function of the container and not of the molecules to be placed in the container as the Examiner has asserted. In addition, Applicants submit that this limitation is not merely arbitrarily selected. The Examiner is referred to the Examples, which clearly show that the saturation adsorption amount provides advantageous properties. With respect to the “contact angle between the inner surface of the container and water,” Applicants also submit that this is a property of the container and not the molecules to be assayed. At page 7, line 18 to page 13, line 1, Applicants have provided a detailed description, which clearly underscores that role played by the claimed ultra-hydrophilic polymers and is further supported by the Examples.

The Examiner has also objected to the present claims because the claims do not recite any definition of the physical structure of the container; however, Applicants note that MPEP §2164.05(a) states: “The specification need not disclose what is well-known to those skilled in the art and preferably omits that which is well-known to those skilled and already available to the public...” Applicants submit that the skilled artisan would readily appreciate that the present invention is amenable to a diverse array of physical structures, so long as the inner surface (the surface to contact the immunoassay specimen) is formed from or coated with the claimed ultra-hydrophilic polymers.

For the foregoing reasons, Applicants submit that the present invention is definite as defined in 35 U.S.C. §112, second paragraph. Withdrawal of this ground of rejection is requested.

The objection of Claims 8-11 under 37 C.F.R. §1.75(c) is obviated by amendment.

Applicants submit that the present application is in condition for allowance. Early notification to this effect is respectfully requested.

Respectfully submitted,

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